

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Richard Gold & Marie Desch

**Date application filed with the Town Clerk:** August 1, 2008

**Nature of request:** A Special Permit to transfer ZBA Special Permit FY97-00002 to new owners and to modify Condition # 5, expiration upon change of ownership.

**Address:** 314 Lincoln Avenue (Map 11C, Parcel 327, R-G Zoning District)

**Legal notice:** Published on August 27 and September 3, 2008 in the Daily Hampshire Gazette and sent to abutters on August 27, 2008.

**Board members:** Thomas Simpson, Barbara Ford and Albert Woodhull

**Submissions:** The petitioner submitted the following with the application:

- A completed application form, management plan & site plan;
- On September 18, 2008, the petitioner provided Town staff with an email correspondence containing a list of 5 requested conditions.

Planning Department staff submitted the following information:

- An analysis of Special Permit conditions, dated September 11, 2008, for other two family residences; and
- A copy of ZBA FY2008-00037 Decision approving the withdrawal request submitted by Onesta Properties LLC.

**Site Visit:** September 9, 2008

The Board met with the applicant and potential new owners at the property and observed the following:

- A small lot non-conforming to size and frontage in a neighborhood of larger lots with single-family dwelling and two family dwellings;
- An existing driveway adjacent to dwelling and along the north property line; and
- Parking for four cars at the rear of property.

Planning Department staff reported to the Board information regarding the interior of the dwelling based on site visit for the previous application, ZBA FY2008-00037, on July 23, 2008.

**Public Hearing:** September 11, 2008

Mr. Simpson disclosed that he was the representative of the Fraternity that sold the house to the current owners, in 1980. He stated that this prior relationship will not affect his ability to provide fair and impartial judgment on the application.

Mr. Simpson explained that the applicant had been informed that he was one of the Board members hearing the application and that the applicant had no objections.

Both applicants, Richard Gold & Marie Desch, spoke to the proposal at the hearing. Mr. Gold provided a history of the use of the property. He said that most of the lots were established in the 1800's and contained 50 feet of frontage.

Since then, most of the properties have combined into larger lots. He noted that the property was used as a single family residence until 1946 and was then used as a sorority, followed by a fraternity. He purchased the property in 1980 and converted it to a two family residence. He noted that the Zoning Board of Appeals approved the two-family because the use was less non-conforming than the fraternity use.

Mr. Gold explained that his son does not wish to inherit the property and he intends to sell it to new owners. Since May, they have been negotiating the sale of the property; however, the new owners cannot close due to the condition requiring expiration of the permit upon change of ownership. He fears the loss of a potential buyer with the existing condition. Mr. Gold requested the Board to make the condition less onerous, and cited a condition of Special Permit ZBA FY2008-00024, granted for a two-family residence at 346 Lincoln Avenue.

He explained that the condition for 346 Lincoln Avenue required the submission of a new management plan for review and approval at a public meeting with notification to specific abutters.

Ms. Desch stated that in the 28 years of owning and managing the property, they have only had one phone call of complaint and they have their telephone number registered with the Amherst Police Department. She noted that they have a strict lease and the new owners will utilize the existing management plan and maintain the same level of control over the tenants.

Mr. Gold informed the Board that the new owners will take over the existing lease. Also, there will be no changes to the management of the property.

The potential new owners, Chad O'Rourke and Dan Feldman stated they are both local residents who own businesses in Amherst. They confirmed that they intend to maintain the same lease as Mr. Gold and continue the management of the property, with no changes.

George and Mary Sidney Treyz, 306 Lincoln Avenue, expressed concern about changes or removal of any Special Permit conditions for new owners. They stated that they have had no issues with the Gold residence. Ms. Treyz asked the Board whether the abutters would be notified about other changes in the future.

Mr. O'Rourke stated that they do not wish to change anything other than the ownership of the residence. He noted that the other conditions of the Special Permit are more likely to maintain order and reduce noise. He explained that condition #2 stated that failure to control excessive noise will render the permit null and void and that parking is limited to four cars, or two per unit.

The Board discussed the importance of maintaining regulatory control over properties when they change ownership and the importance of abutters being informed of changes in ownership and management. Mr. Gold reiterated his concern of not being able to sell the property in the current market and with the expiration upon change of ownership condition. He also noted that any potential buyer would have to receive a Special Permit prior to purchasing the property.

The Board discussed issuing the Special Permit to the new owners and maintaining the expiration upon change of ownership. The potential new owners noted that if they sell the property in the future, they would be required to go through this process again, which they do not want to do.

Mr. Simpson noted that in many cases, circumstances change and that enforcement is difficult even with conditions listed in Special Permits. He explained that expiration upon change of ownership is almost a standard condition for multi-family homes. Ms. Ford moved to close the public hearing. Mr. Woodhull seconded the motion, and the Board voted unanimously to close the hearing. Ms. Ford moved to continue the public meeting to October 2, 2008 at 7:30 P.M., Mr. Simpson seconded the motion, and the Board voted unanimously to continue the public meeting to October 2, 2008 at 7:30 P.M.

**Public Meeting:**        October 2, 2008

Mr. Simpson noted that the applicant had provided a list of requested conditions, via an email correspondence dated September 18, 2008. Specifically, the applicant requested a condition stating that the permit would expire unless the property will be owner occupied, or a new owner or manager resides principally in the Town of Amherst. In addition, upon a change of ownership or management of the property, a new management plan would be submitted to the Zoning Board of Appeals at a public meeting.

Mr. Simpson noted that he believed that the expiration condition should not be removed unless the dwelling becomes owner occupied.

The Board noted that the applicant is intending to sell the property to an interested party and discussed the issuance of the permit to a new owner and what would happen if the sale of the property was not completed.

The Board spent the remainder of the public meeting preparing conditions for the Special Permit.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in a neighborhood of single and multi-family dwellings and is therefore deemed compatible within the R-G District.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures and accessories as no portion of the use or management of the property is changing.

Additionally, condition # 3 of the new Special Permit addresses excessive noise from the property in addition to strict noise management identified in the management plan.

10.384 - Adequate and appropriate facilities will be provided for the proper operation of the two family residence because the lease limits the parking to four cars, the Management Plan provides for comprehensive property management, and the conditions of the permit require that refuse/ recycling be collected and stored in containers and removed from the site at the owners expense.

10.387 – The proposal provides convenient and safe movement within the site and in relation to adjacent property because the Management Plan encourages tenants to back into the parking area allowing the view of oncoming traffic when exiting. Also, the Management Plan requires maintaining landscaping, specifically the hedge along the northern border, in order to permit a safe view of traffic.

10.388 – The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use because the property contains a parking area in the rear of the property where activities can take place.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage of surface water because the site is connected to Town water and sewer and trash and recycling are collected and stored in containers and removed from site at the owners expense.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst and the residents of Lincoln Avenue.

#### **Public Meeting - Zoning Board Decision:**

Ms. Ford made a motion to APPROVE a Special Permit, for the transfer of ownership of a two-family dwelling, to Onesta Properties, LLC, with conditions. Mr. Woodhull seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, for the transfer of ownership of a two-family dwelling, as previously permitted by Special Permit ZBA FY97-0002, to Onesta Properties, LLC., on the premises at 314 Lincoln Avenue (Map 11C, Parcel 327, R-G Zone), with conditions.

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THOMAS SIMPSON

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BARBARA FORD

\_\_\_\_\_  
ALBERT WOODHULL

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2008.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2008  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, for the transfer of ownership of a two-family dwelling, as previously permitted by Special Permit ZBA FY97-0002, to Onesta Properties, LLC., on the premises at 314 Lincoln Avenue (Map 11C, Parcel 327, R-G Zone), with the following conditions:

1. If the transfer of the ownership of the property from Richard Gold and Marie Desch to Onesta Properties, LLC does not occur (i.e., filing with the Hampshire County Registry of Deeds), this new Special Permit will be null and void and the existing Special Permit (ZBA1997-0002) will remain in effect, with Richard Gold and Marie Desch retaining ownership.
2. No parking shall be allowed on the front lawn.
3. Excessive noise shall not be permitted to become a nuisance associated with this property. Failure to control excessive noise shall render this permit null and void.
4. There shall be no more than four cars parked on the premises on a regular basis. Parking shall be as shown on the site plan approved by the Zoning Board of Appeals dated October 2, 2008.
5. No dumpster shall be located on the property or used for waste handling. Trash shall be stored in a 90 gallon lidded poly-cart container with paper and other recyclables stored within the bulkhead and shall be emptied frequently at the owner's expense.
6. A set of ¼ inch scaled floor plans, showing uses and dimensions, shall be submitted to the Board at a public meeting for its review and approval.
7. The property shall be registered as a rental property with the Town of Amherst Board of Health with Certification submitted to the Building Commissioner, with a copy provided to the Zoning Board of Appeals, within 30 days of the recording of the permit with the Hampshire County Registry of Deeds.
8. There shall be no more than 4 bedrooms in each unit, nor shall any unit have more than 4 unrelated occupants at any given time.
9. The name and contact information of the property owner and/or manager shall be provided to the Building Commissioner, Police and Fire Departments and Board of Health within 30 days of the recording of the permit with the Hampshire County Registry of Deeds, and shall be kept current thereafter.
10. The management of the property shall be in accordance with the management plan approved by the Zoning Board of Appeals dated October 2, 2008.
11. The landscaping shall be installed and permanently maintained, in accordance with the management plan and site plan approved by the Zoning Board of Appeals dated October 2, 2008.

12. All outside lighting shall be downcast and shall be directed or shielded to eliminate light trespass onto any street or abutting property.
13. A reflective sign indicating the address of the property, visible from both directions and in accordance with Fire Department requirements, shall be installed at the street front of the property.
14. Upon any subsequent change of ownership this permit shall expire unless the property is owner occupied at that time, in which case a new management plan shall be submitted by the new owner (s) to the Board at a public meeting for its review and approval.

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THOMAS SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE